

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION**

IN RE:)	
)	
TOPPOS, LLC)	CASE NO. 23-02889-5-PWM
)	
DEBTOR)	CHAPTER 7
_____)	

**RESPONSE OF M&T REALTY CAPITAL CORPORATION IN SUPPORT
OF THE CHAPTER 7 TRUSTEE’S MOTION TO SUBSTANTIVELY
CONSOLIDATE CERTAIN NON-DEBTOR AFFILIATES INTO
BANKRUPTCY ESTATE**

M&T Realty Capital Corporation (“M&TRCC”), the secured creditor to certain affiliates of the Debtor in the above-styled case, hereby submits this Response in Support of the Motion to Substantively Consolidate Certain Non-Debtor Affiliates into this Estate (Docket No. 229) (the “Motion”) filed by John C. Bircher III, Chapter 7 Trustee (the “Trustee”). For its response, M&TRCC states as follows:

1. M&TRCC is the secured creditor to five affiliates of the Debtor, which own and operate RV parks in Sangamon County, Illinois, and Morgan County, Illinois. The borrowers are Cedarbrook Estates MHP LLC (“Cedarbrook”), Maple Creek MHP LLC (“Maple Creek”), Rolling Acres MHC LLC (“Rolling Acres”), Prairie Knolls MHP LLC (“Prairie Knolls”), and Grand

Valley MHP LLC (“Grand Valley” and together with Cedarbrook, Maple Creek, Rolling Acres, and Prairie Knolls, collectively the “Illinois RV Park Affiliates”).

2. On or about May 26, 2022, M&TRCC provided a mortgage loan to the Illinois RV Park Affiliates in the original principal amount of \$22,500,000.00 (the “Loan”), pursuant to a Multifamily Loan and Security Agreement, dated May 26, 2022, by and among the Illinois RV Park Affiliates and M&TRCC, as amended from time to time (the “Loan Agreement”).

3. The Borrower’s obligations to M&TRCC under the Loan are evidenced by a Multifamily Note, dated May 26, 2022 (the “Note”), executed by the Borrower in favor of M&TRCC, in the original principal amount of \$22,500,000.00.

4. The Illinois RV Park Affiliates’ obligations to M&TRCC under the Loan and the Note are secured by a mortgage lien encumbering certain parcels of real property commonly known as (a) Cedarbrook Estates, located at 544 Brooklyn Avenue, Jacksonville, Morgan County, Illinois 62650 (the “Cedarbrook Property”), (b) Maple Creek, located at 200 West Street, Woodson, Morgan County, Illinois 62695 (the “Maple Creek Property”), (c) Rolling Acres, located at 1042 East Morton Avenue, Jacksonville, Morgan County, Illinois 62650 (the “Rolling Acres Property”), (d) Prairie Knolls, located at Blacks Lane, Jacksonville, Morgan County, Illinois 62650 (the “Prairie Knolls Property”), and (e) Grand

Valley, located at 11 Grand Valley Drive, Springfield, Sangamon County, Illinois 62702 (the “Grand Valley Property” and together with the Cedarbrook Property, the Maple Creek Property, the Rolling Acres Property, and the Prairie Knolls Property, collectively, the “RV Parks”), pursuant to a Multifamily Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of May 26, 2022, and recorded June 3, 2022, in Morgan County, Illinois, as Document # 643003, and recorded June 7, 2022, in Sangamon County, Illinois, as Document #2022R12380 (the “Mortgage”).

5. The Illinois RV Park Affiliates’ obligations to M&TRCC under the Loan are guaranteed by Bender pursuant to a Continuing Guaranty, dated as of May 26, 2022 (the “Guaranty”), by Bender in favor of M&TRCC.

6. The Loan Agreement, the Note, the Mortgage, and the Guaranty, together with all documents, agreements, and instruments executed in connection therewith and/or in furtherance thereof, are referred to as the “Loan Documents.”

7. By letter dated November 15, 2023, M&TRCC notified the Illinois RV Park Affiliates and Bender that defaults and Events of Default had occurred under the Loan Documents by reason of the Illinois RV Park Affiliates’ failure to make payments to M&TRCC Monthly Debt Service Payments due to Lender on June 1, 2023, July 1, 2023, August 1, 2023, September 1, 2023, October 1, 2023, and November 1, 2023 (the “Default Letter”). In the Default Letter, M&TRCC

advised the Illinois RV Park Affiliates and Bender that the Loan's indebtedness was accelerated and that all of their obligations in respect of the Loan and the Loan Documents were due and owing. M&TRCC demanded satisfaction of all amounts due and owing to M&TRCC under the Loan Documents.

8. Neither the Illinois RV Park Affiliates nor Bender made any attempt to remedy the Events of Default, and instead stonewalled M&TRCC in its efforts to obtain information and payment of the indebtedness.

9. On March 13, 2024, M&TRCC filed a Complaint against Bender in the United States District Court for the Central District of Illinois, seeking a judgment against him in the amount of \$24,240,846.72 on his Guaranty. The case is pending as C.A. 24-cv-03062-CRL-KLM.

10. To date, no payments have been received by M&TRCC from the Illinois RV Park Affiliates or from Bender since the Events of Default occurred. The last payment received by M&TRCC from the Illinois RV Park Affiliates was on or about May 10, 2023 representing payment of the May 1, 2023 payment that was due and owing as of the date the payment was received by M&TRCC.

11. The Loan matured by its terms on November 1, 2023.

12. As of July 30, 2024, there was due and owing on the Loan and the Loan Documents without defense, deduction, offset, recoupment, or counterclaim the total amount of \$24,647,838.72, itemized as follows:

Principal Balance:	\$22,500,000.00
Interest:	
a) Contractual interest	\$932,520.69
b) Default interest	\$1,065,000.00
Late Fees:	\$46,626.03
Escrows:	<u>\$103,692.00</u>

TOTAL AMOUNT DUE AS OF JULY 30, 2024: \$24,647,838.72

plus fees and costs including, but not limited to, attorneys' fees, consultant fees and appraisal fees and accruing interest.

13. Additional Note and Default Interest, together with other fees, charges and costs recoverable under the Loan Documents, continue to accrue on the Loan.

14. It is in the best interests of the creditors to grant the Trustee's Motion because it would maximize value to creditors and have all activities under the Trustee to ensure best outcome for creditors.

15. Granting the Trustee's Motion will streamline liquidation of assets and distribution to creditors.

[Remainder of page intentionally left blank]

WHEREFORE, for the reasons set forth herein and in the Motion, M&TRCC respectfully requests that the Court grant the Trustee's Motion and such other relief as the Court deems just and proper.

WOMBLE BOND DICKINSON (US) LLP

/s/ James S. Livermon, III
James S. Livermon, III
N.C. State Bar No. 26492
555 Fayetteville Street, Suite 1100
Raleigh, NC 27601
(919) 755-2148
Charlie.Livermon@wbd-us.com

and

BALLARD SPAHR LLP

/s/ Diane E. Vuocolo
Diane E. Vuocolo
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
(215) 864-8162
vuocolod@ballardspahr.com

*Attorneys for M&T Realty Capital
Corporation, secured creditor to Cedarbrook,
Maple Creek, Rolling Acres, Prairie Knolls
and Grand Valley*

Dated: July 31, 2024

CERTIFICATE OF SERVICE

I, the undersigned, of Womble Bond Dickinson (US) LLP, hereby certify:

That I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age;

That on this day, I served a copy of the foregoing Response of M&T Realty Capital Corporation in Support of the Chapter 7 Trustee's Motion to Substantively Consolidate certain Non-Debtor Affiliates into Bankruptcy Estate on:

Toppos LLC
401 E. Las Olas Blvd.
Suite 130-161
Fort Lauderdale, FL 33301

by depositing the same in the United States mail, first class, postage prepaid.

That on this day, the foregoing Response of M&T Realty Capital Corporation in Support of the Chapter 7 Trustee's Motion to Substantively Consolidate certain Non-Debtor Affiliates into Bankruptcy Estate was served by electronic means through the Court's CM/ECF service on all parties receiving electronic notices, including the following:

Blake Y. Boyette, Esq.
Joseph Zachary Frost, Esq.
Buckmiller, Boyette & Frost, PLLC
Attorneys for Debtor

John C. Bircher, III, Esq.
Chapter 7 Trustee

I certify under penalty of perjury that the foregoing is true and correct.

Dated: July 31, 2024

WOMBLE BOND DICKINSON (US) LLP

By: /s/ James S. Livermon, III
James S. Livermon, III
NC State Bar Number 26492
555 Fayetteville St., Suite 1100
Raleigh, NC 27601
Telephone: (919) 755-2148
Email: charlie.livermon@wbd.us.com

*Attorneys for M&T Realty Capital
Corporation, secured creditor to
Cedarbrook, Maple Creek, Rolling Acres,
Prairie Knolls and Grand Valley*